ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT COMMISSION OF OHIO.[2]
SUPREME COURT OF VERMONT.[3]

AGENT.

Protection given to Parties dealing with.—Persons dealing with an agent are entitled to the same protection as if dealing with the principal, to the extent that the agent acts within the scope of his authority: *Angle* v. *Life Ins. Co.*, S. C. U. S. Oct. Term 1875.

Pursuant to this rule, it is settled law that where a party to a negotiable instrument intrusts it to another for use as such, with blanks not filled up, such instrument, so delivered, carries on its face an implied authority to complete the same by filling up the blanks; but the authority implied from the existence of the blanks would not authorize the person intrusted with the instrument to vary or alter the material terms of the instrument by erasing what is written or printed as part of the same, nor to pervert the scope and meaning of the same by filling the blanks with stipulations repugnant to what was plainly and clearly expressed in the instrument before it was so delivered: *Id.*

BANKRUPTCY.

Discharge not impeachable collaterally.—Under the present bankrupt law of the United States, the discharge of a bankrupt can be set aside for fraud in obtaining it, only by a direct proceeding for that purpose, pursuant to the provisions of its thirty-fourth section. It cannot be collaterally impeached, on the ground that it was fraudulently or improperly obtained: *Smith* v. *Ramsey*, 27 Ohio St.

BILLS AND NOTES. See *Agent.*

Given for Patent-Right, and Transferred in Payment for Liquor sold in Violation of Law.—The omission to insert in a note given for a patent-right the words, "given for a patent-right," as required by statute, does not render the note void. If the patent-right is good and valid, and forms an adequate consideration for the note, the maker cannot defend against a transferee of the note on the ground of the omission of those words. The object of the statute was to prevent the transfer of such notes to innocent and *bonâ-fide* holders: *Streit* v. *Waugh*, 48 Vt.

Nor can the maker defend upon the ground that the plaintiff received the note from another transferee in payment for liquor sold in violation of law: *Id.*

CONFEDERATE NOTES. See *Executor.*

CONFLICT OF LAWS. See *Debtor and Creditor.*

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[1] Prepared expressly for the American Law Register, from the original opinions. The cases will probably be reported in 2 or 3 Otto.

[2] From E. L. De Witt, Esq., Reporter; to appear in 27 Ohio St. Reports.

[3] From Hon. J. W. Rowell, Reporter; to appear in 48 Vermont Reports.

CONSTITUTIONAL LAW. See *Removal of Causes.*

Regulation of Commerce—State Statutes amounting to—Police Regulations—Tax on Passengers or Ship-owners bringing them.—The case of *The City of New York* v. *Miln*, 11 Peters 103, decided no more than that the requirement from the master of a vessel of a catalogue of his passengers landed in the city, rendered to the mayor on oath, with a correct description of their names, ages, occupations, places of birth, and of last legal settlement, was a police regulation within the power of the state to enact, and not inconsistent with the Constitution of the United States: *Henderson* v. *Wickham, Mayor of the City of New York;* and *Commissioners of Immigration* v. *North German Lloyd*, S. C. U. S. Oct. Term 1875.

The result of the *Passenger Cases*, 7 Howard 283, was to hold that a tax demanded of the master or owner of the vessel for every such passenger, was a regulation of commerce by the state, in conflict with the Constitution and laws of the United States, and therefore void: *Id.*

These cases criticised, and the weight due to them as authority considered: *Id.*

In whatever language a statute may be framed, its purpose and its constitutional validity must be determined by its natural and reasonable effect: *Id.*

Hence a statute which imposes a burdensome and almost impossible condition on the ship-master, as a prerequisite to his landing his passengers, with an alternative payment of a small sum of money for each one of them, is in fact a tax on the ship-owner for the right to land such passengers, and in effect on the passenger himself, since the ship-master makes him pay it in advance as part of his fare: *Id.*

Such a statute of a state is a regulation of commerce, and when applied to passengers from foreign countries, is a regulation of commerce with foreign nations: *Id.*

It is no answer to the charge that such regulation of commerce by a state is forbidden by the constitution, to say that it falls within the police power of the states, for to whatever class of legislative powers it may belong, it is prohibited to the states, if granted exclusively to Congress by that instrument: *Id.*

Though it be conceded that there is a class of legislation which may affect commerce, both with foreign nations and between the states, in regard to which the laws of the states may be valid, in the absence of action under the authority of Congress on the same subject, this can have no reference to matters which are in their nature national, or which admit of a uniform system or plan of regulation: *Id.*

The statutes of New York and Louisiana, here under consideration, are intended to regulate commercial matters which are not only of national but of international concern, and which are also best regulated by one uniform rule, applicable alike to all the sea-ports of the United States. These statutes are therefore void, because legislation on the subjects which they cover is confided exclusively to Congress by the clause of the constitution which gives to that body the "right to regulate commerce with foreign nations:" *Id.*

The constitutional objection to this tax on the passenger is not removed because the penalty for failure to pay does not accrue until twen-

ty-four hours after he is landed. The penalty is incurred by the act of landing him without payment, and is, in fact, for the act of bringing him into the state: *Id.*

This court does not, in this case, undertake to decide whether or not a state may, in the absence of all legislation by Congress on the same subject, pass a statute strictly limited to defending itself against paupers, convicted criminals, and others of that class, but is of opinion that to Congress rightfully and appropriately belongs the power of legislating on the whole subject: *Id.*

Regulation of Commerce—State Statutes—Taxing Immigration.—The statute of California, which is the subject of consideration in this case, does not require a bond for every passenger, or commutation in money, as do the statutes of New York and Louisiana, referred to in *Henderson* v. *Wickham* (*supra*), but only for certain enumerated classes, among which are "lewd and debauched women:" *Chy Lung* v. *Freeman*, S. C. U. S. Oct. Term 1875.

But the features of the statute are such as to show very clearly that the purpose is to extort money from a large class of passengers, or to prevent their immigration to California altogether: *Id.*

The statute also operates directly on the passenger, for unless the master or owner of the vessel gives an onerous bond for the future protection of the state against the support of the passenger, or pays such sum as the Commissioner of Immigration chooses to exact, he is not permitted to land from the vessel: *Id.*

The powers which the commissioner is authorized to exercise under this statute are such as to bring the United States into conflict with foreign nations, and which can only belong to the Federal government: *Id.*

If the right of the states to pass statutes to protect themselves in regard to the criminal, the pauper and the diseased foreigner landing within their borders, exists at all, it is limited to such laws as are absolutely necessary for that purpose, and this mere police regulation cannot extend so far as to prevent or obstruct other classes of persons from the right to hold personal and commercial intercourse with the people of the United States: *Id.*

The statute of California in this respect extends far beyond the necessity in which the right is founded, if it exists at all, and invades the right of Congress to regulate commerce with foreign nations, and is therefore void: *Id.*

CORPORATION.

Foreign—Right to do business in Other State.—It is not contrary to the laws of Ohio, nor against public policy, in the present condition of her laws, for a foreign corporation, lawfully organized in a sister state, to do business in Ohio: *Newburg Petroleum Co.* v. *Weare*, 27 Ohio St.

A foreign corporation, authorized by the laws of the state in which it was organized to do business in this state, may transact business in Ohio not inconsistent with Ohio laws; may sue and be sued in our courts. *Id.*

Persons entering into contract with such foreign corporation concerning property, or rights in property, appropriate to its business in Ohio, will be estopped, after dealing with said corporation, recognizing by

their acts its validity and receiving the benefits of the contract, from denying the power of the corporation to make the contract, in an action on the contract: *Id.*

COVENANT. See *Warranty.*

DEBTOR AND CREDITOR. See *Husband and Wife.*

Appointment of Debtor as Administrator.—The principle that the appointment of a debtor as administrator converts the debt into assets in his hands to be accounted for, does not apply to one who is only conditionally liable to the estate: *Shields, Adm'r*, v. *Odell, Adm'r of Moore*, 27 Ohio St.

The appointment as administrator *de bonis non*, with the will annexed, of one who was surety on the bond of the previous executor, does not make a debt due the estate from such executor assets in the hands of such administrator by reason of his suretyship: *Id.*

Assignment—Conflict of Laws.—An assignment of personal property and choses in action by an insolvent debtor for the benefit of creditors in conformity to the laws of the state of New York, where such debtor resided and did business, operates to transfer the right of action to recover said choses in action to the assignee, and he may maintain an action as such assignee in the courts of this state, to collect the same, although said assignment, as authorized by the laws of New York, gives preferences to certain of the creditors: *Fuller* v. *Steiglitz*, 27 Ohio St.

In case of such an assignment of choses in action, the law of the domicile of the assignor controls and determines what is a sufficient transfer to authorize the assignee to collect the same: *Id.*

The principles of comity between states will allow such assignee to maintain an action, in the courts of this state, against one of its citizens, to collect the same, notwithstanding such preferences, in the absence of any set-off or other defence to such action, or of any lien or charge against said claim under the laws of Ohio, by the debtor: *Id.*

DEED.

Parol Evidence to vary—Construction.—When a general description in a grant is followed by a particular description, the particular description must govern; and if parol evidence of the situation, surroundings, and appellations of the subject of the grant at the time of its execution, would tend to make the general description comprehend more than the particular description, it would tend to contradict the deed in its true construction, and be inadmissible: *Fletcher* v. *Clark*, 48 Vt.

In this case it was held that the particular description did not embrace the demanded premises, and parol evidence to bring them within the general description was excluded: *Id.*

EMINENT DOMAIN. See *Statute.*

ESTOPPEL. See *Corporation.*

EVIDENCE. See *Deed.*

EXCHANGE.

Implied Warranty—Burden of Proof.—A warranty of title is implied in a contract of exchange, the same as in a contract of sale: *Patee* v. *Pelton*, 48 Vt.

In case for deceitfully exchanging property with plaintiff upon which another had a lien, it was held not to rest upon plaintiff to show that he had no notice of the lien at the time of exchange: *Id.*

EXECUTION. See *Officer.*

EXECUTOR. See *Debtor and Creditor.*

Accountability of— When forced to receive Money contrary to his wishes —Jurisdiction.—Where an executor was forced by a military power that he could not control, to receive a sum of money from one of the debtors of the estate, in Confederate money, and to pay it over to the receiver of the Confederate States, and he acted contrary to his wishes, he was excused from accountability for this amount: *Rockhold* v. *Rockhold et al.*, S. C. U. S. Oct. Term 1875.

Such a case does not present a Federal question of which the Supreme Court of the United States can take jurisdiction: *Id.*

FOREIGN CORPORATION. See *Corporation.*

HUSBAND AND WIFE.

Settlement by Husband on Wife—Fraud on Creditors.—In order to defeat a settlement made by a husband upon his wife, it must be intended to defraud existing creditors, or creditors whose rights are expected shortly to supervene, or creditors whose rights may and do so supervene—the settler purposing to throw the hazards of business in which he is about to engage upon others, instead of honestly holding his means subject to the chance of those adverse results to which all business enterprises are liable: *Smith et al.* v. *Vodges, Assignee*, S. C. U. S. Oct. Term 1875.

LIMITATIONS, STATUTE OF.

Commencement of Running.—An ordinance of the city of Cincinnati, making an assessment for grading and paving a street, provided that the owners of lots on which the assessments were made should severally pay the same within twenty days from the date of the ordinance, or be subject to the interest and penalty allowed thereon by law. *Held*, that an action to enforce the lien of such assessment against a lot, commenced more than six years after the date of the ordinance, but within six years after the expiration of said twenty days, is not barred by the Statute of Limitations: *Reynolds et al.* v. *Green*, 27 Ohio St.

MORTGAGE.

The generality of its language forms no objection to the validity of a mortgage. A mortgage of "the road and property" of a railroad company is sufficient: *Wilson* v. *Boyce*, S. C. U. S. Oct. Term 1875.

It is quite within the competency of a railroad company to mortgage its lands not used for its track or appurtenances. It might be deemed prudent and judicious to raise money upon its collateral property rather than upon its road. It might lose its foreign lands and still be successful as a railroad company. If it should lose its track it must at once cease to exist: *Id.*

NATIONAL BANK.

Dealing in Stocks.—In the honest exercise of the power to compromise a doubtful debt owing to a bank, it can hardly be doubted that stocks

may be accepted in payment and satisfaction, with a view to their subsequent sale or conversion into money so as to make good or reduce an anticipated loss. Such a transaction would not amount to a dealing in stocks: *National Bank* v. *Nat. Exchange Bank*, S. C. U. S. October Term 1875.

OFFICER.

Trespasser ab initio—Damages.—If an officer advertises property other than hay, grain, &c., taken in execution at one place, for sale at another place, and sells it accordingly, he thereby becomes a trespasser *ab initio*, and liable for the full value of the property, notwithstanding he applies the proceeds of the sale upon the execution: *Evarts* v. *Burgess*, 48 Vt.

PATENT. See *Bills and Notes.*

REMOVAL OF CAUSES.

Waiver of Right—Constitutional Law.—The Supreme Court of the United States having decided (20 Wallace 445) that a statute of a state which requires a foreign insurance company, before transacting business in the state, to waive its right to remove suits in which it is a party from the courts of the state to the Federal courts, is repugnant to the Constitution and laws of the United States and therefore void—that decision will be followed, though not approved by this court: *Railway Passenger Assurance Co.* v. *Pierce*, 27 Ohio St.

STATUTE. See *Constitutional Law.*

In Derogation of Common Right—Construction—Eminent Domain.—Statutes incorporating aqueduct companies, and granting rights of entry upon private property for the purpose of constructing the aqueducts, and such like statutes, are strongly derogatory of common right, and no cases should be brought within them except such as come within their terms by imperative necessity. Thus, where a statute incorporating such a company provided for entry upon any land through which it might be necessary for the aqueduct to pass, it was held, in an action of trespass *qua. clau.*, that the statute was no justification, it not appearing that it was necessary to enter upon the *locus in quo*: *Farnsworth* v. *Goodhue*, 48 Vt.

WARRANTY. See *Exchange.*

Covenant against Encumbrances and to defend Title.—The defendant conveyed land to the plaintiff, with covenants against encumbrances, and to defend the title conveyed. There was then existing a mortgage on the land made by a prior owner, and the holder of the mortgage afterward brought suit against the mortgagor and both of the parties to this case, and obtained judgment subjecting the land to the payment of the mortgage The land was sold on the judgment, and deeded to the purchaser, who thereupon obtained possession Subsequently, at the suit of the defendant, on error, the judgment was reversed: *Held*—1. The eviction of the plaintiff, under the judgment on the mortgage, was a breach of the covenants of warranty in the deed, and thereupon a right of action thereon accrued in favor of the plaintiff. 2. The subsequent reversal of the judgment did not affect the sale of the land and consequent eviction of the plaintiff, and did not deprive him of his right of action on the covenants of warranty: *Smith* v. *Dixon*, 27 Ohio St.